

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on Universal Service	)	
	)	CC Docket No. 96-45
Schools and Libraries Universal Service Support Mechanism	)	
	)	CC Docket No. 02-6
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	
	)	CC Docket No. 97-21

**Petition for Waiver or Extension of Filing Deadline for Form 472 for Fund Year 2004.**

On behalf of E-Rate applicants in the commonwealth of Virginia and across the nation, I ask the Federal Communications Commission (Commission) to waive the deadline for filing FCC Form 472 (BEAR) for E-Rate Fund Year 2004 (July 1, 2004 – June 30, 2005). The deadline for form submission is today, October 28, 2005 for the vast majority of Priority One service recipients. In accordance with Title 47, Chapter 1, Part 1, Section 1.3 of Commission rules, the Commission may waive its rules on its own motion or on petition.

I ask the Commission to waive or extend the Form 472 filing deadline of October 28, 2005 for the majority of Priority One E-Rate service recipients for Fund Year 2004 because of misleading and inaccurate directions on the Form 472. Applicants attempting to file the Form 472 in accordance with official directions posted on the Schools and Libraries Division (Administrator) Web site would find it impossible to comply and therefore would not file the Form 472. I ask that the waiver or extension be 120 days after the date of publication on the Administrator's Web site of revised, accurate instructions for filing the Form 472.

**Background**

The Commission has charged the Administrator with operational responsibilities of the Schools and Libraries Mechanism, better known as E-

Rate. The Administrator's functions are detailed in Title 47, Chapter 54, Section 54.702 of the Commission's rules, with pertinent cites below:

**§ 54.702 Administrator's functions and responsibilities.**

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism, the low income support mechanism, the interstate access universal service support mechanism described in subpart J of this part, and the interstate common line support mechanism described in subpart K of this part.

(b ) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(f) The Administrator shall create and maintain a website, as defined in

§ 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers

The Commission's Fifth Order on Reconsideration directed the Administrator to submit to the Commission a list of all administrative procedures annually to the Commission.<sup>1</sup> The obvious purpose of such a filing is to make public all procedures the Administrator has in place to effectively and efficiently administer the program. Such filing also gives the Commission the opportunity review all procedures and, if appropriate, order the Administrator to eliminate certain procedures. No action by the Commission in response to the list of administrative procedures would constitute acceptance and validation of the procedures.

Section (f) charges the Administrator with creation and maintenance of a website specifically for posting applications for services. I am confident it was the Commission's desire that the website reflect accurate and timely information.

In a filing with the Commission dated October 29, 2004 the Administrator delivered to the Commission its administrative procedures. On page 21 of the

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<sup>1</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, FCC 04-190, (2004) (*Fifth Report and Order*).

document and under the headline “Invoice Deadlines,” the Administrator states the following:

FCC Forms 472 and 474 must be received within 120 days of the last date of service, or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.  
Disbursements are not made in response to forms received after that date, unless an extension is appropriate.

Because the Commission took no action relative to the statement that the Form 472 and Form 474 must be received within 120 days from the last date of service, such procedure became *de facto* Commission regulation. With this Petition, I ask the Commission to waive this regulation.

#### **Discussion**

The Administrator maintains a website with program applications and instructions for E-Rate. The instructions for the Form 472 state the following:

The applicant should prepare and submit a Billed Entity Applicant Reimbursement Form to the fund administrator when ALL of the following conditions occur:

1. The applicant receives a Funding Commitment Decisions Letter from the fund administrator which approves discounts for services;

AND

2. The applicant is already receiving or has received these services, and has already paid for the services, including the price of the discounts;

AND

3. The applicant has filed FCC Form 486 (Receipt of Service Confirmation Form) and entered “Yes” in Column (I) of Item 6 of the FCC Form 486 to indicate its intention to submit a Billed Entity Applicant Reimbursement Form

These criteria are repeated throughout the instructions, specifically with reference to Item number 3, where Applicants must enter “Yes” in Column (I) of Item 6 of the FCC Form 486.

Close examination of the current Form 486, dated August 2003, and OMB approval number 3060-0853, reveals no Column (I) of Item 6. In fact, there is no (I) at all connected with Item 6 of the form.

Instructions further require applicants to verify the start date for services from the Form 486 Column (E). Column (E) of the current Form 486 is a provision for the Service Provider Identification Number, not the start date for services.

The instructions repeatedly reference the “Schools and Libraries Corporation” and “SLC” and the “SLC Web Site” at [www.slcfund.org](http://www.slcfund.org). This website has not been operational since 1999. It is obvious that these instructions pre-date the establishment of the Schools and Libraries Division under FCC Order.

Applicants certify compliance with all program rules, as required and certified on various FCC Forms, including Item 30 of the current FCC Form 471:

I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts covering all of the services listed on this Form 471 except for those services provided under non-contracted tariffed or month-to-month arrangements. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

Applicants reading instructions for completing the Form 472, attempting to comply with all program rules, would not file the Form 472 and forgo all funding entitled to applicants under the Telecommunications Act of 1996.

Each year 20 to 30 percent of E-Rate funding is not claimed by the filing deadline. Some of these unclaimed funds no doubt result from applicants attempting to comply with program rules and not filing Form 472 because the instructions clearly and categorically instruct applicants NOT to complete the Form, or not to proceed if Column (I) of Item 6 of Form 486 does not indicate “Yes.” This is an impossibility with the current Form. An unknown number of applicants have lost funding or will potentially lose funding this year because of reliance on incorrect instructions.

As E-Rate coordinator for the commonwealth of Virginia, I have received two telephone calls this year from inexperienced applicants asking advice in light of the Form 472 instructions.

It should be noted here that the Commission announced approval of a Form 472 and Instructions on March 4, 2004 (DA 04-527). The announcement

indicated that the new Form was attached but there is no attachment connected with the announcement on the Commission's Daily Digest web site for March 4, 2004. The announcement indicates OMB approved the Form on January 26, 2004 with an approval number of 3060-0856. The current Form 472 has OMB approval number 3060-0856, but is dated October 1998 – over five years before the Commission's March 4, 2004 announcement.

The Federal Communications Commission has a long and staid history of providing precise and accurate information and instructions to entities subject to Commission jurisdiction. Broadcast regulations, for example, precisely enumerate transmission power limits, beam tilt, frequency, antenna height, and a myriad of other requirements. The same applies for virtually all other divisions within the Commission. I am confident the Commission has the same expectation of clear and accurate information from the Wireline Competition Bureau and the Administrator for the E-Rate program. These instructions are beyond misleading and inaccurate. If followed to the letter, and in compliance with Form 471 Item 30 certification, applicants will not complete the Form 472 and lose committed funding.

### **Conclusion**

Because of the fact that some applicants will not file the Form 472 based on incorrect Administrator instructions, I ask the Commission to waive or extend the filing deadline for the Funding Year 2004 Form 472 for the majority of applicants from today, October 28, 2005, to 120 days after proper and corrected Form filing instructions are posted on the Administrator website.

Respectfully Submitted this 28<sup>th</sup> day of October, 2005,

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